

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JESSE HERRERA	§	
VS.	§	CIVIL ACTION NO. 9:18-CV- 21
WARDEN, RUFUS H. DUNCAN GERIATRIC FACILITY	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner, Jesse Herrera, a prisoner confined at the Rufus H. Duncan Geriatric Facility with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding pro se, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.¹

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. Construing the complaint as claims involving the conditions of confinement, the Magistrate Judge recommends the petition be dismissed without prejudice.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, and pleadings. Plaintiff filed objections the Report and Recommendation of United States Magistrate Judge. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

In his objections, petitioner confirms it was intent to file a § 2241 petition relating to a state court conviction. Petitioner states he is challenging claims from the U.S. Court of Appeals for the Fifth Circuit in Cause No. 99-50393 wherein the Clerk allegedly denied petitioner the right of access to *in forma pauperis* status granted by the district court relating to his state court conviction from

¹In his objections, petitioner confirms it was his intent to file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The proper respondent in a § 2241 petition is the warden of the facility where petitioner is incarcerated.

Travis County, Texas. Petitioner also complains the Fifth Circuit denied him the right of access to the appellate process by refusing to docket his appeal.

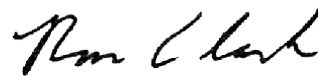
As outlined by the Magistrate Judge, any challenge relating to a state court conviction must be brought pursuant to 28 U.S.C. § 2254. To the extent petitioner asks this Court to make some determination regarding actions or inactions taken by the Fifth Circuit Court of Appeals, this Court has no authority or jurisdiction to do so. This petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 is improper. If petitioner wishes to challenge the state court conviction, petitioner must seek authorization from the Fifth Circuit Court of Appeals to file a successive § 2254 petition.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

So Ordered and Signed

Oct 18, 2018



Ron Clark, Senior District Judge